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1           Essentially, Mr. Perez argues that the Government breached his plea agreement because it  
2 did not recommend the low end of the guideline range as specified under that plea agreement. Mr.  
3 Perez also argues the his counsel was ineffective because his counsel did not object to this breach.  
4 According to Mr. Perez, because of this alleged breach of the plea agreement he received a 24  
5 month sentence, which was the high end of the guideline range, and not an 18 month sentence,  
6 which was the low end of the guideline range.

7           This argument fails for two reasons. First, Mr. Perez pled guilty, pursuant to a written plea  
8 agreement, to one count of Removed Alien Found in the United States, in violation of 8 U.S.C. §  
9 1326(a) and (b). In the written plea agreement, Mr. Perez explicitly waived his right to appeal  
10 and/or collaterally attack his conviction or sentence. The Ninth Circuit has long acknowledged that  
11 the terms of a plea agreement are enforceable. *See, United States v. Baramdyka*, 95 F.3d 840, 843  
12 (9th Cir. 1996), *cert. denied*, 117 S.Ct. 1282 (1997). Since Mr. Perez expressly waived his  
13 statutory right to appeal or collaterally attack his sentence in his plea agreement, Mr. Perez is now  
14 precluded from challenging that sentence pursuant to 28 U.S.C. § 2255. *See, United States v.*  
15 *Abarca*, 985 F.2d 1012, 1014 (9th Cir. 1993) (holding that a knowing and voluntary waiver of a  
16 statutory right is enforceable). Second, and more importantly, the Government did recommend a  
17 sentence of 18 months as evidenced by its Sentencing Summary Chart. Hence, the Government  
18 made the requisite recommendation and did not breach the plea agreement.

19           Similarly, Mr. Perez's counsel was not ineffective simply because the Court did not follow  
20 the parties' recommendations. The written plea agreement clearly states that "the sentence is  
21 within the sole discretion of the sentencing judge." (Plea Agreement, pg 6) The plea agreement also  
22 states that "any estimate of the probable sentence by defense counsel is a prediction." (Id.) Mr.  
23 Perez was informed that a higher sentence was possible and his counsel was not ineffective because  
24 the Court sentenced Mr. Perez to the high end of the guideline range rather than the low end of the  
25 guideline range. Accordingly,

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